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**File No.** Cr. P. C. 11/50 (I)

Legal department-

B **BRANCH**

K

**Subject:—**

Notifications under the

Code of Criminal

Procedure 1898

**File No.** Cr. P. C. 11/50 (II)

Gen. 194 c.

491

Two revised draft notifications one in respect of judicial districts of Poona, Ahmedabad, Surat, Thana and Kolaba and the otherin respect of judicial district of Belgaum , Baroda and Mehsana are sent herewith.

2. The former notification could not automatically cover the former State Areas which are included in those districts.

3. As the question of special jury does not arise in the case of trials in the districts of Belgaum, Baroda and Mehsana Districts, the second notification pertaining these three districts may be issued separately. H.D. should verify whether the Penalties (Enhancement) Ordinance 1942 referred to in the second draft is in force.

Sd/ J.R. Dhurandhar.
3/3

Additional Secretary to Government.

U.R. to H.D. No. 3109, dated the 6th March 1950.

VGP. 17-7-56,.

 Notification

Home Department,

Bombay Castle, 1950.

**Code of Criminal Procedure 1898.**

No. In exercise of the powers conferred by sub-section (1) and (2) of section 268 and sub-section (2) of section 274 of the Code of Criminal Procedure, 1898 (V of 1898) and in supersession of Government Notification in the Home Department, No.7630/4, dated the 22nd October 1945, the Government of Bombay is pleased -

(1) to direct that -

(a) the trial of offence specified in column 2 of the Schedule hereto annexed and of attempts to commit or of abetment of, any of the said offences before the Courts of Sessions specified against them in column 1 of the said Schedule shall be by jury; and

(b) in trials by jury before each of the said Courts of Sessions of any of the said offence, other than those punishable with death the jury shall consist of five persons; and

(2) to declare that in the case of the districts of Ahmedabad, Surat, Thana, Kolaba and Poona, the trial of offences punishable with death shall, if the Judge, on application made to him or of his own motion so directs be by jurors summoned from a special jury list.

Schedule.

| Court of Sessions. 1. | Offences. 2. |
|---|---|
| 1. Court of Sessions of Poona District. | Offences punishable with death transportation for life or imprisonment for ten years under Chapters XI XII XVI, XVII and XVIII of the Indian Penal Code, and offences in respect of which the offender is liable to enhanced punishment under section 75 of the Indian Penal Code. |

| 1. | 2. |
|---|---|
| 2. Court of Sessions of Ahmedabad Districts. | Offence punishable with death. |
| 3. Courts of Sessions of Surat, Thana and Kolaba Districts. | Offences punishable with death, transportation for life or imprisonment for ten years and offences in respect of which the offender is liable to enhanced punishment under section 75 of the Indian Penal Code. |

By order of the Governor of Bombay,

Secretary to Government.

VGP. 17-7-56.

NOTIFICATION.

Home Department,

Bombay Castle, 1950.

Code of Criminal Procedure, 1898.

No. In exercise of the powers conferred by sub-sections (1) and (2) of section 269 and sub-section (2) of section 274 of the Code of Criminal Procedure, 1898 (V of 1898), the Government of Bombay is pleased to direct that (a) the trial of offences specified in column 2 of the Schedule hereto annexed, and of attempts to commit or of abetment of, any of the said offences before the Court of Sessions specified against them in Column 1 of the said schedule shall be by jury; and (b) in trials by jury before the said courts of sessions of any of the said offences, the jury shall consist of five persons.

Schedule.

| Court of Sessions. 1. | Offences. 2. |
|---|---|
| 1. Court of Sessions of Belgaum District. | All offences except (1) offences punishable under sections 302, 303, 304, 304A, 305, 306, 307, 308, 309, 311 465, 466, 467, 468, 469, 471, 472, 473, 474, 475, 476, 477A, 484, 485, 487, 488, 489A, 489B 489C and 489D of the Indian Penal Code, (2) offences punishable under sections 6 and 7A of the Penalties (Enhancement) Ordinance 1942, and (3) abetments of and (3) abetments of, and attempts to commit the offence excepted in (1) and (2). |
| 2. Court of Sessions of Baroda District. | Offences punishable with sentence of imprisonment for less than ten years or fine. |
| 3. Court of Sessions of Mehsana District. | do |

By order of the Governor of Bombay.

Secretary to Government.

I

NOTIFICATION.

Home Department.

Bombay Castle, March 1950.

Code of Criminal Procedure, 1898.

No. .- In exercise of the powers conferred by sub-section (1) of section 10 of the Code of Criminal Procedure, 1898 (V of 1898), and in supersession of Government Notification in the Judicial Department, No. 2835, dated the 20th April 1899, the Government of Bombay is pleased to appoint all persons now or hereafter, permanently or temporarily, holding the office of Collector as defined in the Bombay Land Revenue Code, 1879, in the State of Bombay, to be Magistrates of the First Class and District Magistrate of the Districts to which they may be posted, for such time as they may hold the aforesaid offices.

By order of the Governor of Bombay,

Secretary to Government.

VGP. 18-7-56.

II



NOTIFICATION.

Home Department,

Bombay Castle, March 1950.

Code of Criminal Procedure 1898.

No. .- In exercise of the powers conferred by sub-section (2) of section 10 of the Code of Criminal Procedure, 1898 (V of 1898), the Government of Bombay is pleased to appoint all persons, now or hereafter permanently or temporarily holding the office of the Personal Assistant to the Collector, in the State of Bombay to be Magistrates of the First Class and Additional District Magistrates in the districts to which they may be posted, for such time as they may hold the aforesaid offices. All such Additional Magistrates shall have all of the powers of a District Magistrate under this Code or under any other law for the time being in force.

By order of the Governor of Bombay,

Secretary to Government.

III



NOTIFICATION.

Home Department,

Bombay Castle, March 1950.

Code of Criminal Procedure, 1898.

No. .- In exercise of the powers conferred by sections 12 and 39 of the Code of Criminal Procedure, 1898 (V of 1898), and in supersession of Government Notification in the Judicial Department, No. 2836, dated the 28th April 1899, the Government of Bombay is pleased

(1) to appoint all persons, now or hereafter permanently or temporarily, holding the office of Assistant or Deputy Collector as defined in the Bombay Land Revenue Code, 1879, and not invested with higher Magisterial powers to be Magistrates of the Third Class in the Districts to which they may be posted, for such time as they hold the aforesaid offices, and

(2) to direct that they shall exercise their powers in the taluka or talukas which may be placed under their charge under the Bombay Land Revenue Code, 1879, for the purposes of the revenue administration.

By order of the Governor of Bombay.

Secretary to Government.

VGP. 18-7-56.

29

IV

NOTIFICATION.

Home Department,

Bombay Castle, March 1950.

Code of Criminal Procedure, 1898.

No. .- In exercise of the powers conferred by section 12 and 39 of the Code of Criminal Procedure 1898(V of 1898), and in supersession of Government Notification in the Judicial Department, No. ~~2830~~ 2837, dated the 28th April ~~1899~~ 1899, the Government of Bombay is pleased to appoint all persons, now or hereafter, permanently or temporarily, holding the office of Mamlatdar or Mahalkari as defined in the Bombay Land Revenue Code, 1879, or of Aval Karkun, Extra Aval Karkun, Taluka Aval Karkun, Treasure Aval Karkun or Treasury Head Karkun to such Mamlatdar or Mahalkari, and not invested with higher Magisterial powers, to be Magistrates of the Third Class in the areas for which they are appointed as Mamlatdar, Mahalkaris, Extra Aval Karkuns, Taluka Aval Karkuns, Treasury Aval Karkuns or Treasury Head clerk to such Mamlatdars or Mahalkaris for such time as they may hold the aforesaid offices.

By order of the Governor of Bombay,

Secretary to Government.

VGP. 18-7-56.

Our revised draft notifications are sent herewith.

Sd/ J.R. Dhurandhar.
8/3

Additional Secretary to Government.

U.R. to H.D. No. 3230, dated the 8th March 1950.

VGP. 18-7-56.

The view taken by H.D. is correct.

2. Attention of H.D. is invited to R.L.A.'s opinion No. 13587 dated the 26th November 1949.

3. Under paragraph 5 of the Indian States (Application of Laws) Order 1948, along with the repeal of the enactment in the Cambay State corresponding to the Code of Criminal Procedure 1898, the order regarding the list of assessors (or jurors) issued under it will also stand repealed.

Additional Secretary to Government.

U.R. to H.D. No.4164, dated the 25th March 1950.

VGP. 18-7-56.

The presumption made by Home Department in para 2 of its note at pages 5 to 6 ante is correct.

The Legal Department was not aware that Home Department Notification No.7630/4 dated the 22nd October 1845 had been further amended by the Home Department Notification No. 7630/4 dated the 5th May 1949 in respect of the Court of Sessions of Ahmedabad, nor the file containing said the amendment was among the papers then sent to the Legal Department.

The necessary amending notification is sent herewith.

Sd/ J.R.Dhurandhar.
1/5

Additional Secretary to Government.

U.R. yo H.D. No. 5915, dated the 1st May 1950.

VGP. 18-7-56.

NOTIFICATION.

Home Department,

Bombay Castle, 1950.

Code of Criminal Procedure, 1898.

No. In exercise of powers conferred by sub-sections (1) and (2) of section 269 and sub-section (2) of section 274 of the Code of Criminal Procedure 1898, ( V of 1898), the Government of Bombay is pleased to amend Government Notification in Home Department No.9844/5(I), dated the 29th March 1950, a s follows namely:-

In the Schedule to the said Notification for the entry in column 2 against the "Court of Sessions of Ahmedabad District" the following entry shall be substituted, namely:-

" Offences punishable with death, transportation for life, or imprisonment for ten years and offences in respect of which the offender is liable to enhanced punishment under section 75 of the Indian Penal Code.

By order of the Governor of Bombay,

Secretary to Government.

VOP. 18-7-56.

One of the proposals of Home Department is to renumber the present villages of Ratnagiri Police Station as 1 to 126, the Pali Police Station of the Ratnagiri Taluka having been abolished by Government Notification Home Department No. 2096-B, dated the 31st August 1922. But by Government Notification , Home Department No.8885/4, dated the 29th June 1945, 23 villages of the Ratnagiri Police Station have been included in the Lanja Police Station. In order to give a clear idea of the local areas under the Ratnagiri Police Station, it is advisable to issue a fresh notification specifying all the 126 villages under it. A revised draft notification is sent herewith. The blanks in the notification should be filed in by Home Department.

Sd/ J.R.Dhurandhar.
1/4

Additional Secretary to Government.

U.R. to H.D. No.7472, dated the 2nd June 1950.

VGP. 18-7-56.

A revised draft notification is sent herewith.

2. Both village "Matwad" and village "Dandi" are within the limits of the Jalalpore Police Station. By the inclusion of certain portion of the former village in the latter village no change in the name of either village is effected. It is not therefore necessary to issue a notification under section 4(1)(s) of the Code of Criminal Procedure, 1898, for that purpose.

Sd/J.R.Dhurandhar.
30/5

Additional Secretary to Government.

U.R. to H.D. No.7349, dated the 31st May 1950.

VGP. 18-7-56.

Looking to the wordings of section 426(2A) as it stands, it appears that under it a bail can only be granted to a person other than a person accused of a non-bailable offence, that is to say, that a person convicted of a bailable offence cannot be granted bail if he was originally accused of a non-bailable offence. To deprive an accused person of bail in such a case is hardly reasonable as the offence with which he was orgianlly charged, when subjected to the test of trial, had not been proved and he is convicted only of a bailable offence. The real test for the determination of the question whether the accused in such a case should or should not be enlarged on bail should be the nature of the offence of which he is ultimately convicted and not the nature of the offence of which he was originally charged. The High Court's proposal to amend section 426(2A) of the Code of Criminal Procedure, 1898 in the sense indicated in the last paragraph of their letter of 3-4-1950 is therefore reasonable and may be accepted. But before it is accepted, it should be referred to the Government of India. Although it is open to the State Legislature to amend the Criminal Procedure Code, the matter is one of all India importance and if any amendment is to be made, it should be for the whole country and not for Bombay only.

Sd/J.R.Dhurandhar.
1/6

Additional Secretary to Government,
Legal Department.

U.R. to H.D.No.7406, dated the 1st June 1950.

VGP. 18-7-56.

The Inspector General of Police in his letter at page 1 referred to form No.52. This is not correct. The relevant form is Form No.42 and not No.52.

2. Form No.42 set forth in the fifth Schedule to the Criminal Procedure Code is a statutory form; but section 555 of the Code authorises the use of the forms with such variation as the circumstances of each case may require. Hence it is not necessary to move the Government of India for taking steps to amend the form as suggested. A suitable form can be prescribed by executive orders. Under article 227 of the Constitution the High Court haspower to prescribe forms for regulating the practice and proceedings of courts in relation to which it exercises jurisdiction.

3. Form No.42 as worded is applicable in the case of accused charged with an offence triable by a court of session. The expression "preliminary inquiry" is significant. It is not applicable to cases triable by Magistrates It would thereforebe necessary to prescribe a new form to meet the contingency. Form No.42 should also be amended side by side.

4. A draft form revising For, NO.XLII and a draft form applicable in a case triable by a Magistrate are sent herewith.

5. As the High Court is the proper authority to prescr such forms, the Home Department is requested to refer the drafts to the High Court.

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.No. 9332, dated the 5th July 1950.

VGP. 18-7-56.

As the Ditwas, Patepur, Santrampur and other Police Stations referred to are situated in one and the same district viz. the Panch Mahals district, it is not necessary to issue eleven separate notifications as proposed by the Home Department. A consolidated draft notification in place of the eleven draft notification at pages 5-23 and 27-39 ante is sent herewith.

It is presumed that the creation of these additional Police Stations does not affect the area of the existing Police Stations.

It is usual to describe the Police Station with reference to the taluka in which it is situate e.g. Limdi Police Station of the Jhalod Taluka. The Home Department should fill in the blanks in the revised draft before it is issued.

A revised draft notification in place of the Home Department draft at page 25 ante is also sent herewith

Sd/ J.R.Dhurandhar.
18/7

Additional Secretary to Government.

U.R. to H.D. No. 10143, dated the 19th July 1950.

VGP. 18-7-56.

The draft notification at page 27 ante is in order.

Sd/ J.R.Dhurandhar.
11/8

Additional Secretary to Government.

U.R. to H.D. No.11491, dated the 11th August 1950.

VGP. 18-7-56

NOTIFICATION.

Home Department,

Bombay Castle, 1950.

Code of Criminal Procedure, 1898.

No. 9844/5. In exercise of the powers conferred by sub-sections (1) and (2) of section 268 and sub-section (2) of section 274 of the Code of Criminal Procedure, 1898 (V of 1898), the Government of Bombay is pleased to amend Government Notification in the Home Department, No.8944/5(II), dated the 29th March 1950, as follows, namely:-

In the Schedule to the said notification for the entry relating to the "Court of Sessions of Mehsana District" the following entry shall be susbtituted, namely:-

| | |
|---|---|
| "3. Court of Sessions of Mehsana, Amreli and Banas Kantha Districts. | Offences committed in the Districts of Mehsana and Amreli and punishable with sentence of imprisonment for less than 10 years or fine." |

By order of the Governor of Bombay

Secretary to Government.

VGP. 18-7-56.